

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:14-CV-133-FL

TIMOTHY P. DANEHY,

Plaintiff,

v.

TIME WARNER CABLE ENTERPRISES
LLC,

Defendant.

**DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Defendant Time Warner Cable Enterprises LLC (“Defendant” or “TWC”), through counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves for summary judgment as to both causes of action alleged in Plaintiff Timothy P. Danehy’s (“Danehy”) Complaint. In support of this Motion, Danehy shows the Court the following:

1. Plaintiff Timothy Danehy (“Plaintiff” or “Danehy”) filed this action to recover statutory damages under the federal Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., (“TCPA”) for six telephone calls initiated by TWC’s vendor to his cell phone. Danehy’s cell phone received the calls because a TWC customer who previously owned Danehy’s cell phone number had given that number to TWC so that TWC could contact him regarding his cable account. A vendor for TWC attempted to contact TWC’s customer to confirm a service visit requested by TWC’s customer.

2. The Complaint alleges two causes of action: a violation of section 227(b) of the TCPA for purportedly placing unsolicited calls using an ATDS; and a violation of section 227(c) of the TCPA for calling a phone number listed on the national “Do Not Call” registry.

3. Congress enacted the TCPA to prohibit unsolicited automated telemarketing practices by, among other things, proscribing the use of an Automatic Telephone Dialing System (“ATDS”) that calls randomly generated or sequentially numbered telephone numbers.

4. As explained in Defendant’s accompanying Memorandum, Danehy’s claims fail as a matter of law because he was not the intended recipient of the calls as required by the TCPA, and the calls to Danehy’s cell phone were not made by an ATDS. The calls also fall outside the scope of the TCPA because they were not sent in bulk, randomly, nor for advertising or telemarketing purposes. TWC, therefore, is entitled to judgment as a matter of law.

This the 14th day of October 2014.

/s/ D.J. O’Brien III
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he electronically filed the foregoing document with the Clerk of Court using the CM/ECF system and that he served a copy of the foregoing document on the Plaintiff in this action by placing the same in United States Mail, prepaid postage affixed, addressed as follows:

Timothy P. Danehy
P.O. Box 301
Kittrell, NC 27544
Pro Se Plaintiff

This the 14th day of October 2014.

/s/ D.J. O'Brien III
D.J. O'Brien III